THE HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY

Crl.Rc.No.705 of 2005

ORDER:

This revision is directed against the judgment passed in Crl.A.No.245 of 2004 dated 15.4.2005 on the file of the Court of Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad confirming order passed in C.C.No.1112 of 2001 dated 3.8.2004 on the file of the Court of XVII Metropolitan Magistrate, Hyderabad convicting and sentencing the petitioner/accused for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'the Act').

Whereas the revision petitioner is the accused, the first respondent is the complainant in the calendar case. For the sake of convenience, I refer the parties as arrayed in the calendar case.

The accused was convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default of payment of the fine amount, to undergo simple imprisonment for two months. Thereby the accused preferred Crl.A.No.245 of 2004 on the file of the Court of Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, before which, the conviction was confirmed, but however, the sentence was reduced to that of six months simple imprisonment while retaining the fine and default clauses, aggrieved by which, the present revision case has been filed.

The complainant filed the above noted calendar case against the accused for the offence punishable under Section 138 of the Act. According to the complainant, the accused obtained hand-loan of Rs.1,00,000/- paid two times i.e. paid Rs.50,000/- on 5.10.1998 and Rs.50,000/- on 22.12.1998 and executed two promissory notes in her favour. Thereafter, the accused also issued two cheques dated 4.7.2001 and 9.7.2001 for Rs.50,000/- each. When the complainant

presented the said cheques for realization through her banker Andhra Bank, Himayathnagar branch, they were returned unpaid with a memo dated 14.8.2001 with endorsement 'insufficient funds' in the corresponding account. The defence taken by the accused is that by force the complainant obtained the cheques.

Therefore, it has to be seen as to whether sufficient evidence was placed to the effect that the cheqeues were obtained by force and there was no legally enforceable debt and as such the conviction and sentence imposed against the accused are tenable or not.

By virtue of Section 139 of the Act, it is to be presumed when admittedly the accused issued the cheque, that he did so towards legally enforceable debt only. Therefore, when he pleads that the complainant obtained the cheque by force, he has to place satisfactory evidence in that regard. But in fact he failed to place any evidence to substantiate his claim. Quite surprisingly, he did not enter the witness box for giving evidence. Thereby there are no grounds to uphold the defence taken by him. There is no dispute about the compliance of relevant law with regard to the relevant circumstances of the case.

The sentence imposed on the other hand is quite reasonable. There are no grounds to interfere with the conviction and sentence imposed by the trial Court and upheld by the appellate Court. The revision is devoid of merits and deserves to be dismissed.

Accordingly, the revision is dismissed.

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G.KRISHNA MOHAN REDDY, J

Dated: 28.6.2012
DA

THE HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY

Crl.Rc.No.705 of 2005

28.6.2012

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY

Crl.Rc.No.705 of 2005

Date: 28.6.2012

Between:

P.Praveen Kumar

.. Petitioner/Accused

And

Smt.P.Vijaya Laxmi and another.

.. Respondents